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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.T., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B210908
(Super. Ct. No. JV45910)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

G.T.,

Defendant and Appellant.

G.T. ("Mother") appeals an order of the juvenile court granting sole legal and physical custody of her daughter A. to her father ("Father"), terminating jurisdiction, and dismissing the dependency. (Welf. & Inst. Code, § 362.4.)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On April 26, 2007, the San Luis Obispo County Department of Social Services ("DSS") filed a petition on behalf of four-year-old A. DSS alleged that

¹ All statutory references are to the Welfare and Institutions Code.

Mother reported that her former boyfriend had sexually abused A. During a medical exam to determine if A. had been sexually abused, A. appeared to be under the influence of a controlled substance. A laboratory test confirmed that she had ingested methamphetamine. DSS alleged that A. was at substantial risk of suffering serious physical harm due to Mother's failure to protect her. (§ 300, subd. (b).)

DSS also alleged that Mother consumed many prescription pain medications, and had threatened A.'s dentist if he did not prescribe pain medications for the child. DSS added that Mother had contacted a mental health crisis agency, claiming to be overwhelmed and in need of pain medication.

DSS alleged that Father, W.K., lived in Washington and had not developed a relationship with A. (§ 300, subd. (g).) DSS stated that Father had provided child support for her.

On May 3, 2007, DSS added an allegation that Mother permitted her former boyfriend to return to the family home and have contact with A. A. informed a DSS social worker that the former boyfriend was angry "because the police [were] going to take him to jail."

On May 9, 2007, the juvenile court detained A. and granted her care and custody to DSS. DSS placed A. in the home of Mother's former husband and A.'s half-siblings. The court also set a combined jurisdiction and disposition hearing.

At the combined hearing, Father appeared. The juvenile court appointed counsel for him and granted a continuance of the hearing.

On July 6, 2007, Mother and Father appeared at the combined jurisdiction and disposition hearing. At Mother's request, DSS amended the petition to include statements that her former boyfriend may have provided methamphetamine to A., and that Mother did not allow him to return to the home, despite A.'s report. Mother and Father then submitted the matter upon the filed DSS reports and proposed orders. The juvenile court sustained the allegations of the petition, continued A. in the care and custody of DSS, and ordered family

reunification services to Mother and Father. Mother's family reunification services plan required her to obtain general counseling, evaluation of her prescription medications, and substance abuse assessment and testing, among other things.

The DSS reports stated that Father had been convicted of domestic violence against Mother in 2003 and had been imprisoned for one year as a result. Following release from prison, Father violated the terms of parole, and was reimprisoned. A restraining order precluded Father from contacting Mother until 2013. The restraining order did not apply to A.

Following the jurisdiction and disposition hearings, A. visited with Father and her paternal relatives. On December 17, 2007, DSS placed A. in Father's home after receiving a favorable assessment from the Washington Department of Social and Health Services.

During the first six months of the dependency, Father provided evidence that he had completed a 52-week domestic violence treatment program, successfully completed parole, completed two outpatient substance abuse programs, completed a parent education program, and tested negative in random drug testing. Father also was involved in Alcoholics Anonymous.

Mother failed to attend 8 of 13 random drug tests and, on two occasions, tested positive for high levels of alcohol. Mother was also arrested in October 2007 for possession of methamphetamine and drug paraphernalia. Mother was inconsistent in visitation with A. During some visits, she appeared attentive and behaved appropriately; during other visits, she appeared emotionally unstable.

At the six-month review hearing on February 7, 2008, Mother testified that she had not consumed prescription pain medication for a month. She stated that she resumed treatment with Drug and Alcohol Services and with a therapist. The DSS social worker testified and stated that she did not recommend dismissal of the dependency "at this point" because she wanted to ensure that A. was "getting counseling and other services she needs" in Washington.

The juvenile court continued A. as a dependent child and ordered continuation of family maintenance services to Father and family reunification services to Mother. The court found that Father, but not Mother, had complied with family reunification services.

On May 16, 2008, DSS mailed notice to Mother and Father that at the June 18, 2008 family maintenance services review hearing, it would recommend dismissal of the dependency. Father prepared custody orders granting full legal and physical custody to him. Mother requested a contested review hearing. The juvenile court set a contested review hearing for July 17, 2008.

The DSS review report recommended dismissal of the dependency and continued placement of A. with Father. The social worker concluded that A. was happy and well cared for in Father's home and that Father had remained drug and alcohol-free. Mother had complied in part with her family reunification services plan, completing a parent education class and randomly testing for drug use. She also maintained frequent telephone contact with A. and had visited her twice in Washington. Mother's therapist had closed Mother's case, however, due to Mother's inability "to attend appointments, to arrive on time or to attend an appointment without being under the influence of an unknown substance."

At the conclusion of the evidence, the juvenile court decided to dismiss the dependency, terminate jurisdiction, and award sole legal and physical custody to Father. It awarded Mother reasonable and supervised visitation with A.

Mother appeals and contends that she did not receive due process of law because the DSS notice did not warn her that legal custody of A. was in issue.

DISCUSSION

Mother argues that she did not know that legal custody was in issue at the family maintenance review hearing because neither the DSS notice, the DSS report, nor the discussion at the hearing so informed her. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308 [notice of every hearing in dependency proceeding is a

"significant safeguard" of a parent's constitutional right to due process of law].) She points out that section 292 requires that notice of a family maintenance review hearing state "any change in the custody or status of the child being recommended" by DSS. Mother asserts the error is structural error requiring reversal, or at least not harmless beyond a reasonable doubt. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 553-554 [structural error where department failed to provide parent with status review report].) She adds that the asserted lack of notice denied her the opportunity to develop evidence and argue for joint legal custody.

We do not dismiss Mother's appeal as moot because she asserts a procedural defect that challenges the constitutionality of the order dismissing the dependency and terminating the jurisdiction of the juvenile court. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547-1548.) Moreover, "refusal to address such . . . errors on appeal by declaring the case moot has the undesirable result of insulating erroneous or arbitrary rulings from review." (*Id.* at p. 1548.)

Mother received adequate and constitutional notice that legal custody was in issue at the contested hearing. The notice mailed to Mother on May 16, 2008, one month prior to the hearing, stated that the hearing concerned "A change in orders, services, placement, custody, or status" "Dismissal" was handwritten on the notice. The DSS report recommended dismissal of the dependency because A. was flourishing in Father's care. At the hearing, Mother testified and also cross-examined the DSS social worker. Father prepared the custody orders a month in advance of the hearing and the juvenile court signed the orders at the conclusion of the hearing. Mother did not object nor did she state that she was unaware of the custody orders when DSS stated that Father "prepared custody orders." When the juvenile court questioned if there were "[a]ny modifications" to the submitted orders, Mother did not object or respond. The juvenile court also stated to Mother that it hoped that "unsupervised visitation could occur, but that's going to have to happen in

a different frame work."² Given the adequate DSS notice, the recommendations in the DSS report, and the statements of the court during the contested hearing, Mother received constitutionally sufficient notice that sole legal custody was in issue.

The order is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

² The juvenile court judge stated: "I don't want you to look at this as the end. I want you to look at this as the beginning of making a new life for yourself and move on. I would hope that unsupervised visitation could occur, but that's going to have to happen in a different frame work."

Roger T. Picquet, Judge
Superior Court County of San Luis Obispo

Janice A. Jenkins, under appointment by the Court of Appeal, for
Defendant and Appellant.

Warren R. Jensen, County Counsel, Leslie H. Kraut, Deputy County
Counsel, for Plaintiff and Respondent.